TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 182.

THE COUNTY OF DALLAS, IN THE STATE OF MISSOURI, PLAINTIFF IN ERROR,

vs.

JOHN W. MacKENZIE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED OCTOBER 17, 1874.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the district court of the United States for the western district of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the April adjourned term, 1874, thereof, between John W. Mackenzie, plaintiff, and against The County of Dallas, in the State of Missouri, defendant, a manifest error hath happened, to the great damage of the said County of Dallas, as by its complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington City on the second Monday of October next, in the said Supreme Court, to be then and there held; that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this seventh day of July, in the year of our Lord one thousand eight hundred and seventy-four.

Issued at office in the city of Jefferson, with the seal of the circuit court of the United States for the western district of Missouri, dated as aforesaid.

[SEAL.]

M. M. PRICE,
Clerk C. C. U. S., West Missouri,
By C. M. WARD, *Deputy.*

Allowed by—

A. KREKEL, *Judge.*

2 UNITED STATES OF AMERICA,
Western District of Missouri, set:

I, M. M. Price, clerk of the circuit court of the United States in and for the western district of Missouri, in obedience to the mandate of the within writ, herewith transmit to the honorable Supreme Court of the United States a full, true, and complete transcript of the record and proceedings had in the within cause as fully as the same appear in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said circuit court, at office in the city of Jefferson, this 20th day of July, A. D. 1874.

M. M. PRICE, *Clerk,*
By C. M. WARD, *Deputy.*

(Indorsed:) United States circuit court, districts of Missouri.
vs. . Writ of error to the district court of the United States for the eastern district of Missouri. Returned and filed , 187 . , clerk.

3 The United States of America to John W. Mackenzie and Fletcher & Reynolds, his attorneys of record, greeting:

You are hereby cited and admonished to be and appear at a Supreme

Court of the United States to be holden at the city of Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western district of Missouri, wherein The County of Dallas, in the State of Missouri, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Arnold Krekel, judge of the circuit court of the United States for the western district of Missouri, this seventh day of July, in the year of our Lord one thousand eight hundred and seventy-four.

A. KREKEL,
Judge United States Circuit Court, Western District of Missouri.

4 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Executed this writ by delivering a copy of the same to Thomas C. Fletcher, of the firm of Fletcher and Reynolds, and one of the attorneys for John W. Mackenzie, at St. Louis, within the eastern district of Mo., July 11th, 1874.

C. A. NEWCOMB,
U. S. Marshal, E. D. Mo.,
By GEO. N. STEVENS, *Deputy.*

Marshal' fees: 1 ci'on, $2.00; travel to serve same, 125 miles, 7.50—$9.50.

(Indorsed:) United States circuit court, western district of Missouri. The County of Dallas vs. John W. Mackenzie. Citation. Filed , 187 . , clerk.

5 In the circuit court of the United States for the western district of Missouri.

Be it remembered that in vacation of said court, and on the 13th day of December, A. D. 1873, there was filed in the office of the clerk of said court a certain petition, in words and figures following, to wit:

THE UNITED STATES OF AMERICA,
Western District of Missouri, ss:

JOHN W. MACKENZIE, PLAINTIFF,
vs.
THE COUNTY OF DALLAS, DEFENDANT.

In the circuit court of the United States for the western district of Missouri, April term, A. D. 1874.

The plaintiff, John W. Mackenzie, states that he is a citizen of the city and county and State of New York; that the defendant, The County of Dallas, in the State of Missouri, is a corporation created by and existing under the laws of said State of Missouri, and a citizen of said State of Missouri.

Plaintiff further states that on the 28th day of December, 1871, at

said district, the said defendant did, by its certain writings obligatory, dated on the day and year aforesaid, sealed with its seal, and signed by the presiding justice of its county court, and attested by the signature of the clerk of said court, and numbered from 1 to 85, acknowledge itself to be indebted to the Laclede and Fort Scott Railroad Company, a corporation created and organized under and by virtue of
6 an act of the general assembly of the State of Missouri, entitled "An act to incorporate the Laclede and Fort Scott Railroad Company," approved Jan'y 11th, 1860, or bearer, by each of said writings, in the sum of one thousand dollars, which sums it covenanted to pay at the German-American Bank in the city of New York, to said Laclede and Fort Scott Railroad Company, or bearer, in fifteen years after date, with interest thereon at the rate of (10 %) ten per cent. per annum, payable semi-annually at said bank, on the first days of January and July in each year, upon presentation and surrender of the coupons severally subjoined to said bonds, at said bank, as the said coupons severally became due and payable; and said bonds recited that they were severally issued pursuant to an order of the county court of Dallas County, Missouri, made on the eighteenth (18th) of May, 1871, and amended on the nineteenth (19) day of June, 1871, and on the twelfth (12) of August, 1871, by authority granted in the charter of the said Laclede and Fort Scott Railroad Company, approved January 11, 1860.

1st. Plaintiff further states, as first cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 1, fell due on the 1st day of January, 1873, and said defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and the plaintiff was and is the owner for value and the bearer of the said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he here-
7 with files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

2nd. Plaintiff further states, as a second cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 2, fell due on the 1st day of January, 1873, and said defendant, though often requested, has neglected and refused, and still neglects and refuses, to pay the same, and the plaintiff was and is owner for value and the bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

3rd. Plaintiff further states, as third cause for action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 5, fell due on the 1st day of January, 1873, and said defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and the plaintiff was and is owner for value and the bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

4th. Plaintiff further states, as fourth cause for action, that an instalment of *of* interest of fifty dollars on another of said bonds, to wit, bond No. 8, fell due on the 1st day of January, 1873, and said defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and the plaintiff was and is
8 the owner for value and bearer of the said coupon for said interest, and is entitled to recover thereon the said fifty dollars and

interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

5th. Plaintiff further states, as fifth cause for action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 9, fell due on the 1st day of January, 1873; said defendant, though often requested, has neglected and refused, and still does refuse and neglect, to pay the same, and the plaintiff was and is the owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

6th. Plaintiff further states, as sixth cause for action, that an instalment of interest for fifty dollars on one of the said bonds, to wit, bond No. 10, fell due on the 1st day of January, 1873, and said defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and the plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

7th. Plaintiff further states, as seventh cause for action, that an instalment of interest for fifty dollars on one of said bonds, to wit,
9 bond No. 11, fell due on the 1st day of January, 1873, and said defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and the plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, and ten per cent. interest thereon from maturity.

8th. Plaintiff further states, as eighth cause for action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 11, fell due on the 1st day of July, 1873; said defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and the plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

9th. Plaintiff further states, as ninth cause for action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 12, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and the plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

10 10th. Plaintiff further states, as tenth cause for action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 12, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused to pay the same, and the plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for same, with ten per cent. interest thereon from maturity.

11th. Plaintiff further states, as eleventh cause for action, that an in-

stalment of interest for fifty dollars on one of said bonds, to wit, bond No. 29, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and the plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

12th. Plaintiff further states, as twelfth cause for action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 30, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and the plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

11 13th. Plaintiff further states, as thirteenth cause for action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 31, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and the plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

14th. Plaintiff further states, as fourteenth cause for action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 32, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

15th. Plaintiff further states, as fifteenth cause for action, that an instalment of interest for fifty dollars on one of said bonds, to wit, No. 33, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and the plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

12 16th. Plaintiff further states, as the sixteenth cause for action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 34, fell due on the 1s' day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

17th. Plaintiff further states, as seventeenth cause for action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 35, fell due on the 1st day of January, 1873, and defendant, though

often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and the plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars, and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

18th. Plaintiff further states, as eighteenth cause for action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 36, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

13 19th. Plaintiff further states, as nineteenth cause for action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 37, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and the plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon; and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

20th. Plaintiff further states, for twentieth cause for action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 38, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and the plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

21st. Plaintiff further states, as twenty-first cause for action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 39, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and the plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

14 22d. Plaintiff further states, for twenty second cause for action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 40, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and the plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

23d. Plaintiff further states, as twenty-third cause for action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 40, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and the plaintiff was and is owner for value and bearer

of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

24th. Plaintiff further states, for twenty-fourth cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 41, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

15 25th. Plaintiff further states, for twenty-fifth cause of action, that an installment of interest for fifty dollars on one of said bonds, to wit, bond No. 41, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

26th. Plaintiff further states, for twenty-sixth cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, No. 42, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and the plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

27th. Plaintiff further states, for twenty-seventh cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, No. 42, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

16 28th. Plaintiff further states, for twenty-eighth cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 43, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

29th. Plaintiff further states, for twenty-ninth cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 43, fell due the 1st day of July, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and the plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon said fifty dollars and interest thereon, and he herewith files said coupon and

prays judgment for the same, with ten per cent. interest thereon from maturity.

30th. Plaintiff further states, for thirtieth cause for action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 44, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

17 31st. Plaintiff further states, for thirty-first cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 44, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

32d. Plaintiff further states, for thirty-second cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 45, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

33rd. Plaintiff further states, for thirty-third cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 45, fell due on the 1st day of July, 1873, and defendant, though often requested, neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

18 34th. Plaintiff further states, for thirty-fourth cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 46, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

35th. Plaintiff further states, for thirty-fifth cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 46, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

36th. Plaintiff further states, for thirty-sixth cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 47, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and the plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

19 37th. Plaintiff further states, for thirty-seventh cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 48, fell due *due* on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and the was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with interest thereon at ten per cent. from maturity.

38th. Plaintiff further states, for thirty-eighth cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 49, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

39th. Plaintiff further states, for thirty-ninth cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 50, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

20 40th. Plaintiff further states, for fortieth cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 51, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

41st. Plaintiff further states, for forty-first cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 52, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

42d. Plaintiff further states, for forty-second cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond

No. 53, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

21 43d. Plaintiff further states, for forty-third cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 54, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

44th. Plaintiff further states, for forty-fourth cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 54, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

45th. Plaintiff further states, for forty-fifth cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond 55, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and *neglected*, and still does neglect and refuse, to pay the same, and the plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

22 46th. Plaintiff further states, for forty-sixth cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 55, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and the plaintiff was and is owner for value and bearer of said coupon for said interest, and is entiled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

47th. Plaintiff further states, for forty-seventh cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 56, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and the plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

48th. Plaintiff further states, for forty-eighth cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond 58, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse,

to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

23 49th. Plaintiff further states, for forty-ninth cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 58, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

50th. Plaintiff further states, for fiftieth cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 59, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

51st. Plaintiff further states, for fifty-first cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 60, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

24 52d. Plaintiff further states, for fifty-second cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 60, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

53d. Plaintiff further states, for fifty-third cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 61, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

54th. Plaintiff further states, for fifty-fourth cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 61, fell due on the 1st day of January, (July,) 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover

thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

25 55th. Plaintiff further states, for fifty-fifth cause for action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 62, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity. .

56th. Plaintiff further states, for fifty-sixth cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 63, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

57th. Plaintiff further states, for fifty-seventh cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, No. 63, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

26 58th. Plaintiff further states, for fifty-eighth cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 64, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

59th. Plaintiff further states, for fifty-ninth cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 65, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

60th. Plaintiff further states, for sixtieth cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 65, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said *said*

coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

27 61st. Plaintiff further states, for sixty-first cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 66, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

62d. Plaintiff further states, for sixty-second cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 66, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

63d. Plaintiff further states, for sixty-third cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 67, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

28 64th. Plaintiff further states, for sixty-fourth cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 67, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

65th. Plaintiff further states, for sixty-fifth cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 68, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

66th. Plaintiff further states, for sixty-sixth cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 68, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

29 67th. Plaintiff further states, for sixty-seventh cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 69, fell due on the 1st day of January, 1874, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment thereon, with ten per cent. interest thereon from maturity.

68th. Plaintiff further states, for sixty-*nin*th cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 69, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

69th. Plaintiff further states, for sixty-ninth cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 70, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

30 70th. Plaintiff further states, for seventieth cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 71, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

71st. Plaintiff further states, for seventy-first cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 72, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

72d. Plaintiff further states, for seventy-second cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 72, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

31 73d. Plaintiff further states, for seventy-third cause of action, that an instalment of interest for fifty dollars on one of said bonds,

to wit, bond No. 73, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

74th. Plaintiff further states, for seventy-fourth cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 74, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does refuse and neglect, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

75th. Plaintiff further states, for seventy-fifth cause of action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 74, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

32 76th. Plaintiff further states, for seventy-sixth cause for action, that an instalment of interest for fifty dollars on one of said bonds, to wit, bond No. 75, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same, and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

By reason of all which the plaintiff avers that defendant is indebted to him in the sum in gross of three thousand eight hundred dollars, with interest from the maturity of the various demands as above set out, for which, with costs, he demands judgment.

FLETCHER & REYNOLDS,
Attys. for Plff.

And afterwards, to wit, on the 20th day of December, 1873, the clerk of said court issued the following summons, to wit:

WESTERN DISTRICT OF MISSOURI, *set:*

The President of the United States of America to the marshal of the western district of Missouri, greeting:

You are hereby commanded to summon The County of Dallas, a corporation existing under and created by the laws of the State of Missouri, and a citizen of said district, that it be and appear before the *the* honorable circuit court of the United States for the western dis-
33 trict of Missouri, on the first day of the next term thereof, to be holden at the city of Jefferson, in and for said district, on the *the* 20th of April next, then and there to answer the complaint of

John W. MacKenzie, a citizen of the State of New York, as set forth in the petition filed in said court on the 13th day of December, A. D. eighteen hundred and seventy-three.

Hereof fail not, and have you then and there this writ.

Witness the honorable Nathan Clifford, presiding justice of the Supreme Court of the United States, the 20th day of December, A. D. eighteen hundred and seventy-three.

Issued at office, in the city of Jefferson, under the seal of the said circuit court, the day and year last aforesaid.

[SEAL.] M. M. PRICE,
Clerk of said Court.

And upon which said writ is endorsed the following return, to wit:

I certify that I executed the within writ by delivering a true copy of the within summons, together with a copy of the petition filed in this cause, to Thomas B. Morrow, county clerk of Dallas County, on the 27th day of December, 1873, at Buffalo, in the western district of Missouri.

GEO. SMITH, *U. S. Marshal*,
By S. O. TENNY, *Deputy*.

And afterwards, to wit, at the April term, 1874, of said circuit court, and on the third day of said term, and the 22d day of said
34 month, the following appears of record in said cause, to wit:

JOHN W. MACKENZIE
vs.
DALLAS COUNTY. } No. 200.

Now comes the plaintiff, by his attorneys, Fletcher & Reynolds, and the defendant, although duly served with process more than fifteen days before the commencement of this term of court, and solemnly called, comes not, but makes default, whereby this action remains against it herein undefended; but because this action is founded upon instruments of writing for the direct payments of money, the court proceeds to ascertain the amount of debt and damages due and owing by the said defendant to the said plaintiff, and doth assess the same at the sum of four thousand one hundred and seven dollars and seventy-eight cents.

It is therefore considered, ordered, and adjudged by the court that the plaintiff have and recover of and against the said defendant as well the said sum of four thousand one hundred and seven dollars and seventy-eight cents, as aforesaid assessed, as also his costs and charges herein laid out and expended, and have thereof execution.

And afterwards, to wit, at said term of said court, and on the tenth day thereof, it being the 29th day of April, 1874, the following appears of record in said cause, to wit:

JOHN W. MACKENZIE
vs.
DALLAS COUNTY. } No. 200.

35 Now comes the defendant, by its attorney, J. P. Ellis, and files motion to set aside the judgment entered herein; which said motion is as follows, to wit:

In the circuit court of the United States for the western district of Missouri.

JOHN W. MACKENZIE, PLFF.,
vs.
THE COUNTY OF DALLAS, DEFT.

And now comes Dallas County, by her attorney, and moves the court to set aside the judgment in the above-entitled cause rendered against the defendant at the present term thereof, and that the court permit the defendant to plead to the petition therein, and assigns therefore the following reasons:

1st. That John P. Ellis is the attorney for the said county of Dallas, and in all the suits against her on account of subscriptions to railroads and indebtedness thereby incurred.

The said John P. Ellis, in Springfield, in Greene County, Mo., was only informed on the 26th day of April, 1874, that the above-entitled cause has been brought; that he has been informed that the county clerk of said county said he had sent the writ and copy of petition to said attorney in time to have appeared had the papers been secured and obtained by the said attorney, nor had he notice or knowledge of the bringing of said action until said date; that if said judgment be set aside, the defendant has a good and meritorious defense to the
36 cause of action as set forth in the plaintiff's petition, which he asks to be permitted to make.

DALLAS COUNTY,
By JOHN P. ELLIS, *Atty.*

STATE OF MISSOURI,
County of Cole, ss:

I, John P. Ellis, upon oath, says that the matters and things as set forth in the foregoing motion and application are true, as I verily believe.

JOHN P. ELLIS.

Subscribed and sworn to before me this 29th day of April, 1874.
M. M. PRICE, *Clk.*,
By C. M. WARD, *D. C.*

And afterwards, to wit, at said term of said court, and on the 30th day of April, 1874, the following appears of record in said cause, to wit:

JOHN W. MACKENZIE
vs.
DALLAS COUNTY. } No. 200.

Now comes the defendant, by its attorney, J. P. Ellis, and submits to the court here the motion heretofore filed to set aside the judgment herein. Whereupon it is ordered by the court that said motion be held under advisement; that defendant have leave to exhibit answer on or before the 10th day of May, serving copy thereof, on plaintiff's attorneys, and cause continued until the 19th day of May next.

37 And afterwards, to wit, at the April adjourned term, 1874, held on the 19th day of May, 1874, the following appears of record in said cause, to wit:

JOHN W. MACKENZIE
vs.
DALLAS COUNTY.

Now again come the said parties, the plaintiff by Fletcher & Reynold, and the defendant by John P. Ellis; and the motion heretofore filed herein, to set aside the judgment by default, being submitted to the court, and being seen and heard, the court doth order that said motion be sustained, and the said judgment by default rendered herein be, and the same is hereby, set aside *aside*, and for naught held and esteemed.

And afterwards, to wit, on the day and at the term last aforesaid, the following appears of record in said cause, to wit:

JOHN W. MACKENZIE
vs.
DALLAS COUNTY.
Nos. 200 & 259.

Now come the parties aforesaid, by their attorneys, and by consent, it is ordered by the court that the two cases now pending in this court, under the above title, be, and the same are hereby, consolidated.

It is further ordered that the defendant file answer instanter, which is according' done, and thereupon the plaintiff files demurrer to answer.

And the said answer, filed as aforesaid, is as follows, to wit:

In the United States circuit court for the western district of Missouri.

JOHN W. MACKENZIE
vs.
THE COUNTY OF DALLAS.

Now comes Dallas County, by attorney, and answering plaintiff's petition in the above cause, denies that it did, on the 28th day of December, 1871, promise to pay to the Laclede and Ft. Scott Railroad Co., or bearer, the sum of one thousand dollars, fifteen years after date, with interest at the rate of 10 per cent. per annum, payable semi-annually, as in petition specifically set out.

Denies that defendant, by its writings obligatory, or coupons, did promise to pay the different sums of money as in petition specifically alleged, in the manner therein set out.

Denies that plaintiff was at the institution of this action, or is now, the owner for value of any of the bonds or coupons in said petition declared on.

And defendant, for a further defense, avers the bonds mentioned in the petition recite that they were issued pursuant to an order of the county court of Dallas County, made on the 18th day of May, 1871, amended on the 19th day of June, 1871, and on the 12th day of August, 1871, but, as defendant alleges, no order or orders authorizing or permitting the issuing of said bonds was ever made by said court, as recited in said bonds; and further, that neither on the said 18th day of May, nor on the 19th day of June, 1871, was any county court in Dallas County had or held, either in regular, adjourned, or special
39 term; but, as defendant avers, two of the justices of the said court, without authority of law, did fraudulently and corruptly make a pretended order, though not as a county court, that the county

of Dallas subscribe to the capital stock of the Laclede and Ft. Scott R. R. Co. the sum of $85,000.00, as an additional subscription to that theretofore made of the sum of $150,000.00; that such subscription should be paid in bonds of said county similar to those described in petition; but, as such order says, "the same is made upon the express condition precedent to the taking of such stock and issuing of such bonds, viz:

1st. That said bonds shall not be signed or delivered until all contracts made by said R. R. Co. with Edward Burgess be annulled and finally terminated and set aside.

2d. That unless the county court of Dallas County, or the clerk thereof, be notified in writing by said R. R. Co. of their acceptance of the terms of said order, with all its conditions and reservations, on or before the 31st day of December, 1871, said order should be null and void, and of no binding effect in law or equity, and without damage to Dallas County; but, as defendant avers in truth and in fact, there were contracts in force at the time of such pretended order between said R. R. Co. and Edward Burgess, nor were they, at the date of issuing said bonds, annulled or finally terminated or set aside.

Also in truth and in fact said R. R. Co. did not notify said county court, nor the clerk thereof, of their acceptance of said order, and
40 its conditions and reservations, on or before the 31st day of December, 1871, nor did they, before said date, nor since, accept the same.

And defendant further says, that at the term of said court, held August 12th, 1871, no order was made by the said court taking stock in said R. R. Co., nor authorizing in any way the issuing of said bonds.

And defendant also says said bonds were fraudulently and corruptly signed and issued by the presiding justice of said court, and attested by the clerk thereof, but without authority, or any order therefor by said court, all of which facts appear clearly by an examination of the pretended orders referred to in said bonds.

And further, defendant avers said bonds were fraudulently and corruptly issued as aforesaid, after the 31st day of December, 1871, and were antedated without the knowledge or authority or order of said court.

And defendant further alleges that at the date of said pretended orders, the last annual assessment of the said county of Dallas was less than $1,500,000.00, and said county had already subscribed to the capital stock of said R. R. Co. the sum of $150,000.00. Wherefore defendant says said pretended orders were and are without authority of law, and said bonds null and void, and asks to be discharged with its costs.

JOHN P. ELLIS,
Atty. for Dallas County.

41 And the said demurrer to defendant's answer, filed as aforesaid, is as follows, to wit:

JOHN W. MACKENZIE, PLAINTIFF,
vs.
DALLAS COUNTY, DEFENDANT.

In the circuit court of the United States for the western district of Missouri.

Now comes the said plaintiff, by his attorney, Tho. C. Fletcher, and de-

murs to the answer of said defendant filed herein, and for cause of demurrer assigns the following causes:

1st. Said answer does not state fact sufficient to constitute a cause of defence to the action of plaintiff.

2d. The admissions of the answer are sufficient to entitle plaintiff to recover.

3d. The denials in the answer are inconsistent with the admissions made therein.

4th. It is no defence that the bonds are not produced, the coupons sued on being filed with the clerk.

5th. It is sufficient that plaintiff is the bearer of the coupons; the ownership is not material to defendant.

6th. It is not denied by the answer that the county court had authority under the act incorporating the Laclede and Fort Scott Railroad Company, approved January 11, 1860, to issue said bonds.

7th. The answer admits the issue of the bonds, and does not deny the authority for their issue recited in them.

8th. The bonds on their face import a compliance with the law,
42 and defendant is estopped from denying the regularity of such compliance.

9th. The answer does not charge the plaintiff as being a party, or having knowledge of any of the alleged frauds in issuing said bonds.

THO. C. FLETCHER,
Atty. for Plaintiff.

And afterwards, to wit, on the day and at the term of said court last aforesaid, the following appears of record in said cause, to wit:

JOHN W. MACKENZIE }
vs. }
DALLAS COUNTY. }

Now, again, come the said parties, by their attorneys, the plaintiff by Fletcher & Reynolds, and the defendant by John P. Ellis, and the demurrer to the answer herein being submitted to the court, and seen and heard, the court doth order that said demurrer be sustained, and the said defendant excepting to the ruling of the court, and declining to amend its said answer, but declaring it will abide by the same, wherefore the plaintiff ought to recover by reason of the premises, and this action being founded upon certain instruments in writing for the direct payment of money, the court proceeds to ascertain the amount of the debt and damages due and owing by defendant to plaintiff, and doth assess the same at the sum of four thousand six hundred and sixty-four dollars and eighty-three cents.

It is therefore considered, ordered, and adjudged by the court,
43 that the plaintiff have and recover against the said defendant as well the said sum of four thousand six hundred and sixty-four dollars and eighty-three cents, the debt and damages aforesaid assessed, as also his costs and charges in this behalf laid out and expended, and have thereof execution.

MEMORANDUM: This judgment bears 7 per cent. interest per annum.

And afterwards, on the day and at the term of said court last aforesaid, the following proceedings were had in said cause, to wit:

JOHN W. MACKENZIE
vs.
DALLAS COUNTY.

It is now ordered by the court, on motion of John P. Ellis, defendant's attorney, that defendant have leave to perfect appeal herein, to the Supreme Court of the United States, on or before July 6th, 1874.

And afterwards, to wit, on the sixth day of July, 1874, at an adjourned term of said court, the following other proceedings were had in said cause, to wit:

JOHN W. MACKENZIE
vs.
DALLAS COUNTY.

Now comes John P. Ellis, attorney for defendant, and presents to the court its bond, in the sum of five hundred dollars, which is approved, and thereupon a writ of error is allowed in the above cause, and the proceedings and record herein are ordered to be certified to the
44 Supreme Court of the United States, and said bond is as follows, to wit:

Know all men by these presents, that we, Dallas County, as principal, and Jas. Southard and E. M. Padget as securities, are held and firmly bound unto John W. MacKenzie, in the full and just sum of five hundred dollars, to be paid to the said John W. MacKenzie, his heirs, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this first day of July, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas, lately, at the April term, 1874, of the circuit court of the United States for the western district of Missouri, in a suit depending in said court, between John W. MacKenzie, plaintiff, and The County of Dallas, in the State of Missouri, defendant, judgment was rendered against the said County of Dallas, and the said County of Dallas having obtained a writ of error of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said John W. MacKenzie, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that, if the said County of Dallas shall prosecute said writ to effect, and answer all damages and costs if it fail to make good said plea, then the above obligation to be void, else to remain in full force and virtue.

45 T. B. MORROW, *Clk Co. Court.* [SEAL.]
JAS. SOUTHARD. [SEAL.]
E. M. PADGET. [SEAL.]

Approved by—

A. KREKEL, *Judge.*

STATE OF MISSOURI,
County of Dallas, ss:

We, James Southard and E. M. Padget, upon oath, do say, we are resident freeholders of the aforesaid county, and that we are worth, over

and above all debts and encumbrances, at least the sum of two thousand dollars.

Witness our hands this 1st day of July, 1874.

JAS. SOUTHARD.
E. M. PADGET.

Subscribed and sworn to before me this July 1, 1874.

Witness my hand and the seal of the county court, at office, in Buffalo, the day and year above mentioned.

[SEAL.] T. B. MORROW, *Clerk.*

46 UNITED STATES OF AMERICA:

Circuit court of the United States for the western district of Missouri, ss:

I, M. M. Price, clerk of the circuit court of the United States in and for the western district of Missouri, do hereby certify the writing hereto annexed to be copies of the record and proceedings had in case of John W. MacKenzie, plaintiff, against Dallas County, Missouri, defendant, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of Jefferson, in said western district, this twentieth day of July, in the year of our Lord eighteen hundred and seventy-four.

[SEAL.]

M. M. PRICE,
Clerk of said Court,
By C. M. WARD,
Deputy.

(Indorsement on cover:) No. 182. The County of Dallas, in the State of Missouri, plaintiff in error, vs. John W. MacKenzie. W. Missouri C. C. U. S. Filed 17th October, 1874.

In the Supreme Court of the United States.

THE COUNTY OF DALLAS,
Plaintiff in Error,
vs.
JOHN W. McKENZIE,
ss.

ASSIGNMENT OF ERRORS AND ARGUMENT

—FOR—

DALLAS COUNTY.

JOHN P. ELLIS and
WM. PATRICK,
Attorneys.

In the Supreme Court of the United States.

THE COUNTY OF DALLAS, *Plaintiff in Error,* *vs.* JOHN W. McKENZIE.	*In Error to the Circuit Court of the United States for the Western District of Missouri.*

Now comes the County of Dallas, Plaintiff in Error in the above cause, and assigns as errors the following rulings and judgment of the said Circuit Court:

I. The Circuit Court erred in sustaining the demurrer to the answer of the defendant below;

II. The Circuit Court erred in giving judgment for the plaintiff below.

WILLIAM PATRICK and
JOHN P. ELLIS,
Att'ys for Plaintiff in Error.

ABSTRACT OF THE CASE BY THE PLAINTIFF IN ERROR.

This was an action brought in the United States Circuit Court for the Western District of Missouri, by John W. McKenzie against the County of Dallas, on seventy-six interest-coupons of Municipal Bonds, amounting to $3,800.

The petition alleges that, on the 28th day of December, 1871, the defendant did, by its certain writings obligatory, in due form, acknowledge itself to be indebted to the Laclede and Fort Scott Railroad Co., a corporation created and organized under and by virtue of an Act of the General Assembly of the State of Missouri, entitled "An act to incorporate the Laclede and Fort Scott Railroad Co.," approved January 11th, 1860, or bearer, in the sum of $1,000, with ten per cent. interest, payable semi-annually, in the City of New York; and the petition further alleges, "And said Bonds recited that they were severally issued pursuant to the orders of the County Court of Dallas County, Missouri, *by authority granted* in the charter of the said Laclede and Ft. Scott R. R. Co.," approved January 11th, 1860.

This is the only averment respecting the Bond itself. It is not exhibited, or made part of the petition.

Thereupon, the plaintiff avers an indebtedness of $3,800 on account of the 76 coupons severally declared on, of which he says he is the owner, for value.

The petition neither alleges that the Bonds were issued in payment for Stock subscribed by the County to the Railroad Co., nor what was the purpose or object of issuing them.

The answer of defendant (p. 18, Record), denies—

1st. The promise, as by plaintiff averred;

2d. That plaintiff was, at the institution of the action, or is now, the owner, for value, of any of the Bonds or Coupons in petition declared on.

Defendant further affirmatively sets up fraud in the origin, execution, and issuance of these Bonds, which are a part of $85.000 of Bonds subscribed to the Capital Stock of the Laclede and Ft. Scott Railroad Co., as an additional subscription to one theretofore made to the same Company, of $150,000.

And defendant further alleges, "That at the date of said pretended order, the last annual assessment of the said

County of Dallas was less than $150,000," and said County had already subscribed to the Capital Stock of said R. R. Co. the sum of $150,000."

Wherefore, defendant says said pretended orders "were without authority of law, and said Bonds null and void."

To this answer plaintiff demurred, for specific reasons, substantially, that it did not state facts sufficient to constitute a defense to plaintiff's action.

The demurrer was sustained.

The defendant stood on his demurrer, and the Court gave judgment upon the Coupons, and without other evidence, for plaintiff, for $3,000 and accrued interest.

The County brings the case here by writ of error.

POINTS AND AUTHORITIES.

I.

The defendant's averment of fraud and illegality in the inception of the instrument sued on, together with the denial that plaintiff was the "*owner for value*," raised an issue, the burden of which was cast upon the plaintiff, and the answer, in such averment and denial, was sufficient and not demurrable. On such an issue, the Coupons were alone in sufficient to make out a case for plaintiff, and yet final judgment was so rendered.

Smith *vs.* Sac County, 11 Wallace, 139.

Devlin *vs.* Clark, 31 Mo., 22; 1 Daniel, Neg. Inst. Sec. 815.

II.

The plaintiff's petition does not state facts sufficient to constitute a cause of action; was for that reason demurrable, and did not authorize a judgment for plaintiff.

The power of Counties to issue Bonds is not inherent or general. They are authorized to issue negotiable paper only

for specific and permitted purposes; and hence it must appear by averment in the petition, or by recital in the Bond, made part thereof, that they were issued for one of these purposes.

Thayer *vs.* Montgomery Co., 3 Dillon, C. C. R., 389.
Opinion by Miller, J.

No such purpose, or any other purpose, being alleged in this petition, it fails to show the authority of the County to execute the Bonds, or its obligation to pay them.

The only power claimed for the County was to issue the Bonds in payment for Stock in the R. R. Co. This power and purpose will not be presumed, but must be alleged and proven.

Kennard *vs.* Cass Co., 3 Dillon, C. C. R., 147.

Mayor *vs.* Ray, 19 Wall., 468.

III.

The Laclede and Fort Scott Railroad Company, as the petition shows, was incorporated by special act of the General Assembly of the State of Missouri, approved January 11th, 1860 (acts 59 and 60, p. 434), the fourteenth section of which provides that "it shall be lawful for the County Court of any county in the State to subscribe to the capital stock of said company. * * * * * Any incorporated city, town or company may subscribe to the stock in said company."

The answer shows that there were two distinct subscriptions by Dallas County to the capital stock of the Railroad Company, the first of $150,000, and the second—the legality of which is here involved—of $85,000. It shows further that at the date of the second subscription, the last annual assessment in the county was less than $1,500,000; in other words, the amount already subscribed was more than ten per cent. of such last annual assessment.

After such first subscription, and before the second, and on the 10th day of March, 1871, the General Assembly of Missouri, by a general law, imposed a new condition or limitation upon the power of County Courts to subscribe to the capital stock of Railroad Companies (session acts of 1871, p. 55). The title of this act is as follows: "An Act to amend an act, entitled 'An act to facilitate the construction of railroads in the State of Missouri,'" approved March 23d, 1868, "*and to limit the amount of stock which any county, city, incorporated town, or municipal township may subscribe for the construction of railroads.*"

The act then proceeds to authorize methods for the payment of railroad subscriptions, concluding as follows: "Provided, however, that no county, city, town, or township shall ever, in the aggregate, subscribe a sum exceeding ten per cent. of the last annual assessment within said county, city or township. This act to take effect from and after its passage."

Although this act is amendatory of the law authorizing township subscriptions, yet it expressly refers to and includes within its prohibition counties as well as townships.

The title of this act unmistakably points to its purpose, and is presumed to express the intent of the law, unless plainly contradicted by the body of the act.

Con. Insurance Company vs. Albert, 39 Mo., 181.

By the Constitution of 1865, under which this act was passed, section 32, article IV: "No law enacted by the General Assembly shall relate to more than one subject, *and that shall be expressed in the title.*"

Judge Wagner says of this section: "It is equally obligatory and mandatory with any other provision of the Constitution."

State vs. Miller, 45 Mo., 498.

The limitation on the power of counties contained in this proviso of the act of March 10, 1871, is equally effective as though it were in the enacting clause.

Even if the proviso be repugnant to the main body of the act, the proviso shall stand and be held a repeal of the purview, as it speaks the last intention of the makers.

Second Ed. Sedw., St. 49.

It must therefore be the character and nature of a proviso to be self-sufficient, and it may not be rejected, especially when, as in this case, it is supported by a title constitutionally declaring the subject expressed only by the proviso.

This act of 1871 is not directory as to its proviso, but is *mandatory*, and must be obeyed.

Cooley on Taxation, 212-215.

So we conclude that the power of the county to subscribe to the capital stock of the Railroad Company was exhausted by the first subscription, and that the second was plainly within the prohibition of the act.

The favorite route by which the bondholder seeks escape from the legislation of the State of Missouri, is one discovered by our Supreme Court.

A new rule is found respecting the repeal of statutes, viz: That a special law cannot be repealed, or a limitation imposed upon it by a subsequent general law *by implication*, although negative words are used in the latter, and although obviously a limitation upon the operation of the special act was intended.

Smith vs. Clark County, 54 Mo., 58.

St. Louis vs. Alexander, 23 Mo., 483.

That a general law may be modified, limited or repealed by implication by a later general law cannot be doubted.

We claim that section 14 of the act of incorporation of the Laclede and Fort Scott Railroad Company is a general and not a special law, and as such is modified, and the power therein conferred is limited by the general law of March 10, 1871. The section in the act of incorporation of the North Missouri Railroad Company under consideration in the Clark County case is: "It shall be lawful for the County Court, of any county in which any part of the route of said railroad may be, to subscribe."

This was held to be a special law—one which could not be impliedly modified or repealed by the subsequent general act of 1861.

A comparison of the different acts incorporating railroads, passed at the session of the General Assembly of Missouri during which the Laclede and Fort Scott Railroad Company was incorporated, will serve to illustrate what difference the Legislature intended between a general and a special law.

Act incorporating Lexington and St. Louis Railroad Company (acts 1860, p. 395, sec. 21):

"It shall be lawful for the County Court, of any county in which any part of the route of said railroad shall lie, or any county adjacent thereto, to subscribe."

Tebo and Neosho Railroad (acts 1860, p. 405, secs. 1 and 2):

"County Courts, of counties within nine miles of each side of established line of railroad, may subscribe."

Central Pacific Railroad Company (acts 1860, p. 409, sec. 14):

"It shall be lawful for the County Court, of any county in which any part of the route of the road may be, or any county adjacent thereto, to subscribe," etc.

Mo. River Valley R. R. Co.

(Acts 1860, p. 414, Sec. 20).

"It shall be lawful for the County Court, of any county in which any part of the route of the R. R. may be, to subscribe," etc.

Iowa and Mo. State Line R. R. Co.

(Acts 1860, p. 420, Sec. 6).

"It shall be lawful for the County Court, of any county in which any part of the route of the R. R. shall be, to subscribe," etc.

North Grand River R. R. Co.

(Acts 1860, p. 422, Sec. 14).

"It shall be lawful for the County Court, of any *County interested in said Road*, to subscribe," etc.

PILOT KNOB, CAPE GIRARDEAU, AND BELMONT R. R. CO.

(Acts 1860, p. 428, Sec. 20).

" It shall be lawful for the County Court, of any county interested in said R. R., to subscribe," etc.

PLATTE CITY AND FT. DES MOINES R. R.

(Acts 1860, p. 441, Sec. 6).

"It shall be lawful for the County Court, of any county through which any part of the route of said Road may be located, to subscribe," etc.

WESTON AND PLATTSBURG R. R. CO.

(Acts 1860, p. 444, Sec. 16).

"The Counties of Platte and Clinton may subscribe," etc.

THE LACLEDE AND FT. SCOTT R. R. CO.

(Acts 1860, p. 434, Sec. 14).

"*It shall be lawful for the County Court, of any county in the State, to subscribe*," etc.

Indeed, from the examination made, we feel justified in saying that Sec. 14 of the Act incorporating the Laclede and Ft. Scott R. R. Co. is the only act of the Missouri Legislature conferring generally the power upon all the County Courts in the whole State to subscribe to the stock of a particular R. R. In every other case, the operation of the power conferred, instead of being general throughout the State, is expressly limited to some locality in it.

An Act is special when the subject relates only to a portion of the people or their property, and may not, either in its subject, operation, or immediate necessary results, affect the people of the State, or their property in general.

People *vs.* Supervisors Chatauqua Co., 43 N. Y., 10.

Any law which is enacted for the benefit of the whole State, and equally applicable throughout the State, is general, and not special.

Leavenworth *vs.* Miller, 7 Kansas, 479.

Darling *vs.* Rogers, 7 Kansas, 592.

The fact that Sec. 14, under consideration, occurs in an act incorporating a special corporation, does not hinder that Section from being a general law.

People *vs.* McCann, 16 N. Y., 58.

The distinction between general and special legislation has of late years become an important one, owing to inhibitions against the latter in many of the State Constitutions; and while a discussion of the Constitutional question does not control or decide the exact import of the distinction sought, still it serves to throw much light upon the investigation.

This distinction is preserved and defined by the New Constitution of Mo., 1875, Secs. 53 and 54 of Art. IV: "No local or special law shall be passed unless notice * * shall have been published *in the locality* where the matter or thing may be situated." * * * * *

A special law is here defined to mean one which has locality.

If the above were the only provision in the New Constitution affecting special legislation, where, we ask, should Sec. 14, under consideration, be published? *The matter or thing* affected, is the right of every County in the State to subscribe, and publication would have to be made throughout the State.

The fact that the subject-matter of the act is a particular corporation, does not make the law a special one. It is its general application and effect that determines its character. A law operative throughout the entire State, but directed to one corporation, is not special, more than the many legislative acts in reference to other special internal improvements,

as, the right or method of fishing in particular rivers; the establishment of educational, eleemosynary, and penal institutions; their location in a particular place; and all bills of appropriation for their support.

We conclude, therefore, that the power conferred upon all the County Courts in Missouri, by Sec. 14, was modified and limited by the terms of an act equally general in its application, approved March 10, 1871, and that after an amount exceeding ten per cent. of the last annual assessment in the County had been subscribed, the County Court of Dallas County had exhausted their power to bind the County by further subscription.

We are here met, perhaps, with the concession that, in fact, the County Court have exceeded their powers, and that the last issue of bonds was *ultra vires*, yet, says the respondent, the Bonds have been issued, and they recite that they were issued by authority of the act of 1860, and this Court will presume a compliance with the limitation of 1871, and the County are bound by the act of their County Court in issuing the bonds, and are estopped from disputing that they were issued in conformity with the act of 1871, although they do not so purport, nor has the plaintiff in his petition so averred.

Respecting this aspect of the case, we maintain that there is no presumption in favor of the power to issue these securities, and hence if the bonds contain no recital as to the true authority of their issue, there would be no presumption in favor of their validity, and it would devolve upon the holder to aver and show by evidence *aliunde*, that the bonds were authorized by the Statute.

Where, as in the present case, the Legislature has imposed express conditions upon the exercise of this power, none of the authorities hold that the power can be rightfully exercised unless the condition precedent has been performed. *And if no estoppel exist*, the defense of a failure in the performance of these conditions may be maintained, even against the innocent holder. This *estoppel*, in nearly every

case decided by this Court, has been the result of a recital in the Bond that it is issued under and by virtue of the very law imposing the condition, and hence, presumably, the condition has been performed.

We know of no case involving the question, where it has been held that the mere execution of the Bond by officers charged with the duty of ascertaining whether a condition precedent has been performed, is conclusive proof of its performance.

(See the review of all the cases decided in this Court bearing upon this subject, in Judge Dillon's article on "The Law of Municipal Bonds," in the *Southern Law Review* for October, 1876).

It is contended by the respondent that this case is controlled and decided by "Marcy vs. Township of Oswego," 2 Otto, 637, each being a case of *over-issue*, contrary to the Statute. We have no objection to a proper application of the reasoning in the majority-opinion in that case, and believe when made it will result in a reversal of this case. In that case, the bonds recited that they were "executed and issued by virtue of *and in accordance with*" the very act which prohibited the over-issue; and this Court held accordingly that such recital concluded the Township, and that against an innocent holder the municipality would not be permitted to dispute the truth of their statement in the bond, that it was issued in accordance with the law, by averring or proving a violation of the law.

In our case, neither the bond nor the plaintiff's petition recite that the issue was under or by virtue of, or in accordance with, the act of March 10, 1871, which forbade the over-issue, nor is any reference made to it.

The issue of the $85,000 in dispute is a plain violation of the Legislative limitation on the power of the County Court of Dallas County,. in respect of which that County is not estopped by any recital, statement, payment, or other possible fact, from maintaining her defense of *ultra vires*.

This law was designed by the Legislature to protect the people against usurpation from those in office. We appeal to the last tribunal in our government to enforce the law, and to protect the Dallas County tax-payer from the knavery and treachery of the Dallas County official.

JOHN P. ELLIS and
WM. PATRICK,
Atty's for Plaintiff in Error.

IN THE

Supreme Court of the United States.

THE COUNTY OF DALLAS, MO.,
P. E.,

vs.

JOHN W. MACKENZIE,
Def't in Error.

No. 182.

In Error to the Circuit Court of the United States for the Western District of Missouri.

ARGUMENT FOR DEFENDANT IN ERROR.

THO. C. FLETCHER,
Attorney for Defendant in Error.

UNITED STATES OF AMERICA---ss.

In the Supreme Court of the United States.

THE COUNTY OF DALLAS, MO.,
P. E.,

vs.

JOHN W. MACKENZIE,
Def't in Error.

No. 182.

In Error to the Circuit Court of the United States for the Western District of Missouri.

Now comes the defendant in error, John W. Mackenzie, by Tho C. Fletcher, his attorney, and for joinder in error says there is no error in the record and proceedings of the Circuit Court for the Western District of Missouri in this cause, as the said plaintiff in error hath by his assignment of errors herein alleged.

THO. C. FLETCHER,
Att'y. for Def't in Error.

STATEMENT OF THE CASE BY THE DEFENDANT IN ERROR.

This is an action of debt, on coupons of bonds issued by the County of Dallas, Mo. The petition avers the issue of the bonds and sets out fully their legal effect, and avers that the bonds recite that they were severally issued to the Laclede and Fort Scott Railroad Company, a corporation created and organized under and by virtue of an act of the General Assembly of the State of Missouri entitled "An Act to incorporate the Laclede and Fort Scott Railroad Company," approved January 11th, 1860. That they were issued pursuant to an order of the County Court of Dallas County, Missouri, by authority granted in the charter of the said Laclede and Fort Scott Railroad Company, approved January 11th, 1860. There is a separate count for each of the seventy-six coupons sued upon.

The answer of Dallas County (not under oath) denies that it promised to pay the Laclede & Fort Scott Railroad Company, or bearer, one thousand dollars, with ten per cent. interest;

Denies that it, by its writings obligatory or coupons, promised to pay the sums set out in the petition;

Denies that plaintiff was, at the institution of this suit, the owner for value of the bonds or coupons declared upon;

Then denies the recitals of the bonds, as to the orders of the County Court;

Charges that the County Court frauduently and corruptly made the order; alleges that the order for issuing the bonds contained conditions precedent to their issue, and sets out the conditions; charges that the conditions were not complied with; charges that the bonds were fraudulently and corruptly signed and issued by the Presiding Justice of the County Court and attested by the Clerk thereof; charges that the bonds were ante-dated; and alleges that the issue

of bonds was in excess of the amount warranted by the assessable value of the property in the county.

To this answer there was a demurrer interposed by the plaintiff, assigning the following causes of demurrer:

1. That it did not state facts sufficient to constitute a defence.

2. That its admissions were sufficient to entitle plaintiff to recover.

3. That its denials were inconsistent with its admissions.

4. That it was not necessary to file the bonds, the coupons being filed in the court.

5. That plaintiff being the bearer of the coupons is sufficient, and ownership being immaterial.

6. That the authority of the court to issue the bonds under the special law incorporating the Laclede & Fort Scott Railroad Company is not denied.

7. That it admits their issue and does not deny the authority to issue them, recited in them.

8. The bonds on their face import a compliance with the law, and defendant is estopped from denying the regularity of such compliance.

9. It does not charge plaintiff with knowledge of any of the alleged frauds in the issue of the bonds.

On a hearing the demurrer was sustained. Defendant elected to stand by its answer, and judgment went for plaintiff for four thousand six hundred and sixty-four dollars and eighty-three cents, the amount of the coupons sued upon. Defendant brought the case here by writ of error.

THE DEFENDANT IN ERROR INSISTS:

First. That the answer wholly failed to state facts sufficient to constitute a defence.

It is insisted by the plaintiff in error that the denial that Mackenzie was the owner for value of any of the bonds or coupons declared on in the petition, raised an issue, and cites Smith *vs.* Sac County, 11 Wal. 139.

The distinction between this case and that is so broad that it needs only a reference to one or two facts to make it fully apparent. In that case there was an allegation in the answer that the bonds and the coupons were issued without authority, and that Smith had full knowledge of the facts at the time he purchased them. There is no allegation in the answer in this case that Mackenzie had any knowledge of the alleged frauds and corruption on the part of the Justices of the County Court, or that any one from whom he received the coupons had at any time any such knowledge. The denial of ownership of the coupons might have been material as effecting a question of jurisdiction, if there was a denial of the allegation of the petition that Mackenzie is a citizen of New York; but this allegation is admitted by the answer. The legal presumption is, that Mackenzie is a *bona fide* holder for value; and the mere allegation that the County Justices were guilty of fraud or irregularity, of which Mackenzie was wholly ignorant, and in the entire absence of any allegation of participation in or knowledge of such fraud on his part, or on the part of the party from whom he may have received them, or on the part of the party who received them from the County Court, renders this pleading wholly insufficient to put him upon the proof of his ownership of coupons, payable to bearer, and passing by delivery. *County Commissioners* vs. *Bolles et al., No. 645, decided at this term; Murray* vs. *Lander, 2 Wal. 121.*

The other denials contained in the answer are neither specific as to the execution of the bonds and coupons, nor is it sworn to, and are, therefore, insufficient as pleas of *non est factum.*

Second. The position assumed by the plaintiff in error, that the petition in this case is insufficient, is fairly met by applying to it the rule as laid down in the case cited by him. (*Thayer* vs. *Montgomery Co., 3 Dillon C. C. 389, and Kennard* vs. *Cass Co., 3 Dillon C. C. 147.*) The petition avers the recital of the bonds, that they are issued to "the "Laclede & Fort Scott Railroad Company, a corporation "created and organized under and by virtue of an act of the "General Assembly of the State of Missouri entitled An "Act to incorporate the Laclede & Fort Scott Railroad "Company, approved January 11th, 1860, and by authority "granted in the charter of the said Laclede & Fort Scott Rail-"road Company, approved January 11th, 1860." This sufficiently avers the act of the General Assembly, the 14th section of which confers the power to issue the bonds. *Acts General Assembly State of Mo., 1859-60, page 434.*

"*An Act to incorporate the Laclede & Fort Scott Rail-*"*road Company.* § 14. It shall be lawful for the county "court of any county in the state to subscribe to the stock "of said company, or invest its three per cent. fund or any "other internal improvement fund belonging to the county, "as stock in said road, and for the stock subscribed in behalf "of the county may issue the bonds of the county to raise "the funds to pay for the same." * * * * *

Third. The third point made in the brief of the plaintiff in error involves two propositions;

1st. That a general statute may in its effects, by implication, limit the grants made by a previously enacted special law.

2d. That a section of a special statute which authorizes a corporation to receive subscriptions from any county in the State is a general and not a special law.

The first proposition has been ruled against him by both this Court and the Supreme Court of Missouri, and nowhere

more clearly than in the very well-considered case cited by him, (*Smith* vs. *Clark Co., 54 Mo. 58*). *State ex rel. Mo. & Miss. R. R. Co.* vs. *Macon Co., 41 Mo. 457; Hide Koper* vs. *Dallas Co., Mo., 3 Dillon C. C. 171.*

To the second proposition the reply is, that it has been well held that the power given by the 14th section of the act of incorporation is a privilege of the railroad company, as well as a grant of power to the counties. *State ex rel. etc.* vs. *Sullivan Co., 51 Mo. 522; State* vs. *Green Co., 54 Mo. 540; Thomas* vs. *County of Scotland, 3 Dillon C. C. 7.*

Fourth. The demurrer was well taken, and the judgment of the Circuit Court should be affirmed. All the matters set up in the answer as defence are so analagous to the defences passed upon in recent cases by this Court, that it is not deemed necessary to quote them in detail, they being fresh in the memory of the Court.

Marcy vs. *Township of Oswego, 2 Otto, 637; Ottawa Township* vs. *Perkins; Calloway Co.* vs. *Foster; and County Commissioners* vs. *Bolles*, decided at this term.

THO. C. FLETCHER,
Attorney for Defendant in Error.